

No. 15531

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**United States  
Court of Appeals  
For the Ninth Circuit**

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G. ABRAMSON and HOWARD MILLER,  
Appellants,  
vs.

GEORGE GARDNER, Trustee in Bankruptcy of  
the Estate of Feldman-Seljé Corporation, Bank-  
rupt,  
Appellee.

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**Transcript of Record**

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**Appeal from the United States District Court for the  
Southern District of California,  
Central Division.**



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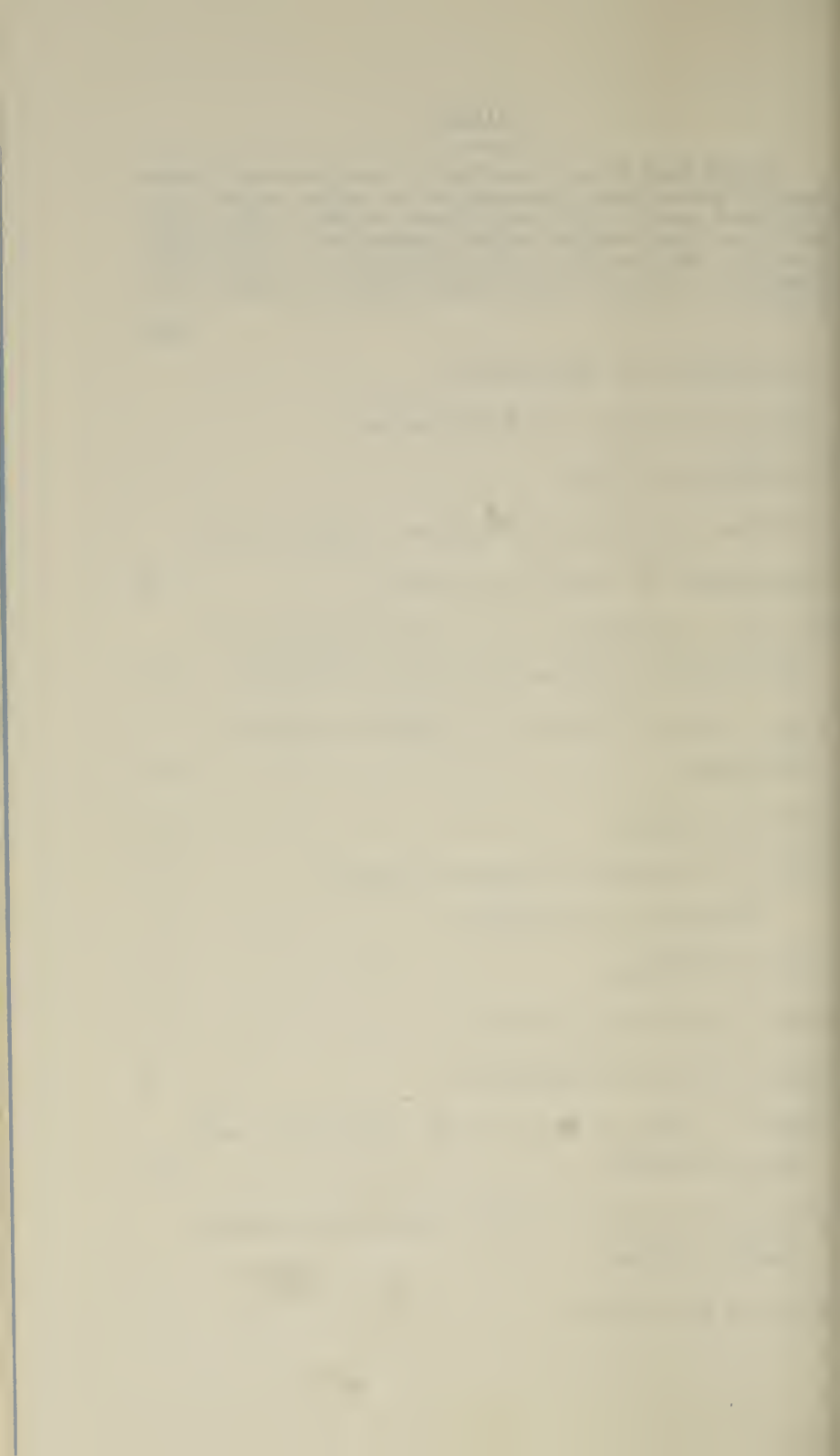
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

WILLIAM J. TIERNAN,  
215 West Seventh Street, Suite 612,  
Los Angeles 14, California.

For Appellee:

SAMUEL A. MILLER,  
700 Lane Mtge. Bldg.,  
Los Angeles 14, California.





In the District Court of the United States, Southern  
District of California, Central Division

No. 74412-TC

In the Matter of:

FELDMAN-SELJÉ' CORPORATION,

Alleged Bankrupt.

CREDITOR'S INVOLUNTARY PETITION  
IN BANKRUPTCY

The petition of Goldenberg Plywood & Lumber Co., Inc., a corporation, Sand Door & Plywood Co., a corporation, and Stahl Lumber Company, Inc., a corporation, respectfully represents as follows:

I.

That the alleged bankrupt, Feldman-Seljé Corporation, a California corporation, has heretofore been engaged in the manufacturing business at 910 East Fourth Street, Los Angeles, County of Los Angeles, State of California, within the above Judicial District and has had its principal place of business at said address for a longer portion of the six months immediately preceding the filing of this petition than in any other Judicial District, and owes debts in an amount in excess of \$1,000.00, and is not a wage earner nor a person engaged in farming or tillage of the soil, but at all times herein mentioned was a manufacturer operating at the address set forth in this allegation.

## II.

That your petitioners are creditors of the said alleged bankrupt, having [2\*] provable claims amounting in the aggregate of any securities held by them to the sum of \$500.00, the nature and amount of which are hereinafter more fully set forth.

## III.

That your petitioners, Goldenberg Plywood & Lumber Co., Inc., Sand Door & Plywood Co. and Stahl Lumber Company, Inc., are each corporations doing business within the State of California and having offices and places of business in the County of Los Angeles, State of California.

## IV.

That within two years last past the alleged bankrupt corporation became indebted to Goldenberg Plywood & Lumber Co., Inc., a corporation, in the sum of \$3,172.79 upon an open book account for goods, wares and merchandise sold and delivered; became indebted to Sand Door & Plywood Co., a corporation, in the sum of \$354.26 upon an open-book account for goods, wares and merchandise sold and delivered; became indebted to Stahl Lumber Company, Inc., a corporation, in the sum of \$1,378.92 upon an open book account for goods, wares and merchandise sold and delivered.

That the alleged bankrupt promised and agreed to pay the sums hereinabove indicated, which sums

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

were and are the reasonable value of the goods, wares and merchandise sold and delivered upon open book account. That all of said sums are now due, owing and unpaid; that no part thereof has been paid despite demand for the payment of said sums.

## V.

That your petitioners allege that said alleged bankrupt is and was at all times herein mentioned insolvent, and on the 17th day of September, 1956, it admitted in writing its inability to pay its debts and its willingness to be adjudged a bankrupt, and the written consent of the alleged bankrupt is filed concurrently herewith.

Wherefore, your petitioners pray that service of this petition, together with a subpoena, be made upon the alleged bankrupt as provided by law, and that it be adjudged by the Court to be a bankrupt within the purview of "The [3] Bankruptcy Act."

GOLDENBERG PLYWOOD & LUMBER CO.,  
INC., a Corporation,

By /s/ JOSEPH M. GOLDENBERG,  
Secretary-Treasurer;

SAND DOOR & PLYWOOD CO.,  
A Corporation;

By /s/ FRED E. KOPPLIN, JR.,  
Assistant Secretary;

STAHL LUMBER COMPANY,  
INC.,

A Corporation;

By /s/ KENNETH W. FINCKLER,  
Secretary-Treasurer.

/s/ SAMUEL A. MILLER,  
Attorney for Petitioners.

Duly verified.

[Endorsed]: Filed October 1, 1956. [4]

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[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 1st day of October, 1956;

Whereas, a petition was filed in this court on the 1st day of October, 1956, against Feldman-Seljé Corporation, alleged bankrupt above named, praying that it be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefore;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Howard V. Calverley, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Feldman-Seljé Corporation shall henceforth attend before said referee and submit to such

orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ LEON R. YANKWICH,  
District Judge.

[Endorsed]: Filed October 1, 1956. [6]

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[Title of District Court and Cause.]

### ADJUDICATION OF BANKRUPTCY

At Los Angeles, in said District, on the 10th day of October, 1956.

The petition of Goldenberg Plywood & Lumber Co., Inc., a corporation, Sand Door & Plywood Co., a corporation, and Stahl Lumber Company, Inc., a corporation, filed on the 1st day of October, 1956, that Feldman-Seljé Corporation, a corporation, and the alleged be adjudged a bankrupt under the Act of Congress relating to bankruptcy, bankrupt having consented to adjudication; and there being no opposing interest.

It is adjudged that the said Feldman-Seljé Corporation, a corporation, is a bankrupt under the Act of Congress relating to bankruptcy.

/s/ HOWARD V. CALVERLEY,  
Referee in Bankruptcy.

[Endorsed]: Filed October 11, 1956. [7]

[Title of District Court and Cause.]

### ORDER APPOINTING RECEIVER

It appearing to the undersigned Referee that the appointment of a receiver is necessary to preserve the estate of the above-named bankrupt and to prevent loss thereto,

It is ordered that George Gardner, of Los Angeles, in said district, be, and he hereby is, appointed receiver of the estate of said bankrupt until the appointment and qualification of a trustee herein; and

It is further ordered that all persons, firms and corporations, including the said bankrupt and all attorneys, agents, officers and servants of the said bankrupt, forthwith deliver to said receiver all property of whatsoever nature and wheresoever located, including lands and buildings, chattels, merchandise, accounts, notes and bills receivable, drafts, checks, moneys, securities, and all other choses in action, account books, records, and all life and fire insurance policies, and all other insurance policies in the possession of them, or any of them, and owned by the said bankrupt; and

It is further ordered that the duties and compensation of said receiver are hereby extended beyond those of a mere custodian, within the meaning of Section 48 of the Bankruptcy Act, and that said receiver be, and he hereby is, authorized and empowered to continue and carry on the business as



conducted by the said bankrupt, for a period of ten days from date hereof; to take such proceedings as may be necessary to enable him to obtain possession of the property of said bankrupt; to prepare a complete inventory of all the property of the said bankrupt that comes into his possession; to collect all moneys owing to the said bankrupt or to which he may be entitled; and, subject to the Postal Laws and Regulations of the United States, to receive all mail addressed to the said bankrupt; and

It is further ordered that before entering upon his duties said receiver shall furnish a bond in the sum of \$2500.00, with a sufficient surety or sureties, to be approved by the Court.

Dated: October 12, 1956.

/s/ HOWARD V. CALVERLEY,  
Referee in Bankruptcy. [8]

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[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE  
RE SETTING ASIDE OF SALE

The Petition of George Gardner represents to this Court that he is the duly appointed, qualified and acting Receiver in Bankruptcy of the above-named bankrupt corporation, which was adjudicated a bankrupt on an Involuntary Petition in Bankruptcy filed against it on October 1st, 1956.

That your Petitioner is informed and believes, and upon such information and belief alleges, that one G. Abramson, as Assignee of the claims of Meridian Furniture Co., Inc., and Style Laminates, Inc., caused a suit to be filed in the Superior Court of the State of California in and for the County of Los Angeles, being No. 665-581, against the above-named bankrupt, on or about August, 24th, 1956, and that subsequently, and to wit, on or about August 27th, 1956, the said G. Abramson caused the Marshal of the Municipal Court of Los Angeles to levy a Writ of Attachment upon the place of business of the above-named bankrupt, at 904 East 4th St., Los Angeles, California, and to place a keeper therein. That subsequently, on or about September 7th, 1956, said Plaintiff obtained a judgment by default against the said bankrupt, and caused a Writ of Execution to be placed in the hands of said Marshal of the Municipal Court, and that pursuant to said Writ of Execution, the said Marshal caused certain office furniture, work in process, and supplies, the exact description being unknown to your Receiver, to be offered for sale on September 12th, 1956, and did purport to sell said items above mentioned to the said Plaintiff, G. Abramson, for the crediting by the said Plaintiff of the sum of \$500.00 upon the judgment so held by her.

That your Receiver is further informed and believes, and upon such information and belief alleges, that the said G. Abramson did [9] subsequently



offer said items above mentioned to one Howard Miller, of 5341 Garden Grove, Tarzana, California, for the sum of \$500.00 cash, which sum was paid to her by the said Howard Miller. That your Receiver is informed and believes, and upon such information and belief alleges, that the said G. Abramson is holding the said \$500.00 to be delivered to whomsoever the Court may find to be entitled to receive it.

That your Receiver is informed and believes, and upon such information and belief alleges, that the items so attempted to be sold were never removed from the premises of the bankrupt, and that your Receiver found them in said premises when your Receiver took possession, and that your Receiver is now in possession of them.

That your Receiver is informed and believes, and upon such information and belief alleges, that the items so attempted to be sold for the sum of \$500.00, are of the value of over \$1,500.00, and your Receiver is also informed and believes, and upon such information and belief alleges, that the said Plaintiff, G. Abramson, knew of the insolvent condition of the said bankrupt at the time of the said execution sale, and is asserting that her said attachment and execution were for the benefit of all creditors.

That if allowed to stand, the said execution sale would be preferential so far as the said G. Abramson is concerned; that the lien obtained by the attachment and execution was a lien obtained by legal

proceedings, within four months of bankruptcy, upon property of the bankrupt, and at a time when the bankrupt was insolvent, and would have been void as against the Trustee in Bankruptcy to be appointed herein, had not the purported sale taken place. That the title attempted to be asserted by the said G. Abramson is not the title of a bona fide purchaser, for the reason that no consideration was paid except the giving of a credit on the judgment, which would be a preference.

That so far as the said Howard Miller is concerned, his said title was acquired by a private transaction between himself and the said G. Abramson, and not at a judicial sale, and that therefore, by the terms of Section 67-A-3 of the Bankruptcy Act, his title is valid only to the extent of the consideration which he paid, to wit, the sum of \$500.00, [10] which the said G. Abramson stands ready to refund to him.

That rental on the Bankrupt's premises amounts to almost \$600.00 per month, and that it is imperative that your Receiver dispose of the assets of this estate and remove from said premises as quickly as possible, to avoid further loss. That your Receiver has demanded that the said G. Abramson and Howard Miller, and each of them, give up and surrender to your Receiver any title which they or either of them may assert in the said property, so that your Receiver may proceed to sell the same, but that the said Howard Miller refuses to surrender his claims of title, and the said G. Abramson

refuses to surrender her claims of title unless it shall be found that the said Howard Miller has no valid claim of title.

Wherefore, your Receiver prays that an Order to Show Cause be issued herein, directed to (1) G. Abramson, whose address is c/o Stanley J. Fishman, Esq., 416 West 8th St., Los Angeles, 14, California, her attorney of record, and (2) Howard Miller, whose address is 5341 Garden Grove Ave., Tarzana, California, and whose Attorney is W. J. Tiernan, Esq., 215 W. 7th St., Suite 1314, Los Angeles, 14, California, and that they and each of them be ordered and directed to be and appear before this Court at its Courtrooms, on a day certain, then and there to show cause if any they or either of them may have, why it should not be ordered and decreed that the purported execution sale to said G. Abramson is preferential and void as against the Trustee to be appointed herein, and why it should not be set aside; and why it should not be ordered and decreed that the claim of title asserted by the said Howard Miller is valid only to the extent of the consideration which he paid for said property, to wit, the sum of \$500.00; and why it should not be ordered and decreed that the said G. Abramson must refund to the said Howard Miller the said \$500.00 being now held by her as aforesaid, and that thereupon the said Howard Miller shall have no further right, title or interest in or to the said property involved; and why the Receiver herein should not be authorized and directed to sell all of the said property as an asset

of this bankrupt estate, free and clear of the [11] claims of the said G. Abramson and the said Howard Miller, or anyone claiming by or under them or either of them; and for such other and further relief as to the Court may seem fit and proper in the premises.

/s/ **GEORGE GARDNER,**  
Receiver in Bankruptcy.

Duly verified.

[Endorsed]: Filed October 19, 1956. [12]

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[Title of District Court and Cause.]

**ORDER TO SHOW CAUSE ON G. ABRAMSON  
AND HOWARD MILLER**

Upon reading and filing the verified Petition of George Gardner, Receiver herein, good cause appearing,

It Is Ordered, That G. Abramson, (whose address is c/o Stanley J. Fishman, Esq., 416 West 8th St., Los Angeles, 14, California, her attorney of record), and Howard Miller, (whose address is 5341 Garden Grove Ave., Tarzana, California, and also c/o his attorney, W. J. Tiernan, Esq., 215 West 7th St., Suite 1314, Los Angeles 14, California) and each of them, be and appear before this Court, at its Courtrooms, 339 Federal Bldg., Los Angeles, California, on the 25th day of October, 1956, at 2:00 o'clock p.m., then and there to show cause, if any

they or either of them may have, why the prayer of the Receiver's Petition should not be granted.

It Is Further Ordered, That a certified copy of this Order to Show Cause, together with a copy of the Petition on which the same is based, be served upon the said Respondents and each of them, either personally, or by Certified Mail, Return Receipt Requested, at least two (2) days prior to the date set for the hearing of this Order to Show Cause, time for service being shortened accordingly.

It Is Further Ordered That if service by Certified Mail is made, it shall be sufficient to address the Respondent G. Abramson c/o Stanley J. Fishman, Esq., 416 West 8th St., Los Angeles 14, California, and to address the Respondent Howard Miller at his home address, 5341 Garden Grove Ave., Tarzana, California, and to also send a copy of said Order to Show Cause together with copy of the said Petition, by ordinary mail, to his said attorney, W. J. Tiernan, Esq., 215 West 7th St., Suite 1314, Los Angeles 14, California.

Dated: October 19, 1956.

/s/ HOWARD V. CALVERLEY,  
Referee in Bankruptcy.

[Endorsed]: Filed October 19, 1956. [13]



[Title of District Court and Cause.]

NOTICE OF MOTION TO  
DISMISS PETITION

To George Gardner, Receiver.

You will please take notice that the undersigned will, as counsel for the respondents, move the court for an order dismissing the petition re setting aside of sale.

This motion will be made before the Honorable Howard V. Calverley, Referee in Bankruptcy, at his courtroom in the Federal Building, Temple and Spring Streets, Los Angeles, California, October 25, 1956, at the hour of two o'clock p.m., or as soon thereafter as said matter may be heard.

Said motion will be made and will be based upon this Notice of Motion, the allegations of the aforesaid petition and upon the grounds that said petition does not state a claim as against these respondents and upon the ground that the receiver is not a qualified person to bring such proceedings, and upon the third ground that the court has no jurisdiction over these respondents or the property which is the subject of said petition.

/s/ WILLIAM J. TIERNAN,

Attorney for Respondents. [14]

## Points and Authorities

Point I: A Receiver in Bankruptcy Is a Mere Custodian and Has No Title to Property.

The allegations of the petition show that the same is filed on behalf of a receiver rather than a trustee. The receiver is attempting to establish title to property as well as to recover the sum of money alleged to be a preference. In neither case is the receiver a proper judicial officer to bring such an action. Pending the qualification of a trustee, a receiver is a mere custodian of property.

The foregoing point was decided by Judge Yankwich of this district in the matter of Club New Yorker, 30 Am. B. R. (N.S.), Page 650, where the court said, at Page 654:

“There can be no summary turnover at the behest of a receiver in bankruptcy. In *re Fuller* (C.C.A. 2d Cir., 1923) 2 Am. B. R. (N.S.) 149, 294 F 71; In *re Oliver* (D.C., Mich., 1924), 4 Am. B. R. (N.S.) 590, 298 F 671. Rightly so, because the receiver in bankruptcy takes no title to the property. He is a mere custodian until trustee takes charge following adjudication. And while he may take over property as to which there is no dispute, he is not entitled to take possession of any property against which a claim of title is made by others.”

Point II: A Judgment Creditor Is a Bona Fide Purchaser at Execution Sale.

The facts show that the respondents purchased personal property at execution sale prior to the filing of a bankruptcy petition. Good faith and lack of knowledge of any pending bankruptcy proceeding show that the respondent is a bona fide purchaser.

This has been decided in California in the case of *Pepin vs. [15] Strickland* (1931) 299 P. 557. 114 CA 32.

It has also been decided that the purchaser of personal property at an execution sale is entitled to the immediate possession thereof. (See Sections 698-699 of CCP of the State of California and see the case of *Holm vs. Overholt* (1932), 6 P. 2d 76, 214 C 431.

Point III: The Bankruptcy Act Itself Protects Bona Fide Purchasers at a Jurisdictional Sale.

Section 67a (3) of the Bankruptcy Act dealing with property subject to a jurisdictional lien provides:

“That the title of a bona fide purchaser of such property shall be valid but if such title is acquired otherwise than at a judicial sale held to enforce such lien, it shall be valid only to the extent of the present consideration paid for such property.”



It is particularly true that where the transaction and the sale have been completed prior to the filing of the bankruptcy petition no lien exists for the trustee to set aside under Section 67a. In such a situation the trustee has only the remedy of reaching the proceeds of the sale in the hands of a creditor under the provisions of Section 60 of the Act; i.e., to recover a preference.

This is the position taken by Collier on Bankruptcy in Volume IV at Page 164:

“But if the transaction is complete, so far as the creditor is concerned, at the time the petition is filed, then no lien remains for Section 67a to affect (citing cases). Yet the trustee may be able in some cases to reach the proceeds of the sale in the hands of the court officer making it. Or, the creditor may be subjected to a plenary suit for the recovery of the property or its [16] purchase price paid to him as a recoverable preference under Section 60.”

Respectfully submitted,

/s/ WILLIAM J. TIERNAN,  
Attorney for Respondents.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 24, 1956. [17]

In the District Court of the United States for the  
Southern District of California, Central Division

No. 74412—TC

In the Matter of

FELDMAN-SELJE CORPORATION, a Corpo-  
ration,

Bankrupt.

FINDINGS, CONCLUSIONS, AND ORDER RE  
ORDER TO SHOW CAUSE AGAINST  
ABRAMSON AND MILLER

The Receiver herein, George Gardner, having filed herein his duly verified Petition for Order to Show Cause Re Setting Aside of Sale, and an Order to Show Cause having been duly issued thereon directed to G. Abramson and to Howard Miller, and each of them, as Respondents, and the matter coming on duly to be heard on October 25th, 1956, at 2:00 p.m., the Receiver appearing in propria persona, and the Respondent G. Abramson appearing by her Attorney, Stanley J. Fishman, Esq., and the Respondent Howard Miller, appearing by his Attorney, W. J. Tiernan, Esq., and the said Respondents through W. J. Tiernan, Esq., having moved the Court for an Order dismissing the Petition Re Setting Aside of Sale, and the Court having heard the evidence in connection with the Motion as well as the evidence in connection with the Order to Show Cause, and being fully advised in the premises, now finds the following facts:

## Findings of Fact

The Court finds that except as herein modified, the facts set forth in the Receiver's Petition are true.

That the said Receiver, George Gardner, is in possession of all of the property involved in this controversy, and that neither of the Respondents is in possession thereof.

That the property involved in this controversy is of the value of \$1,700.00, as found by the Court Appraiser; and that the sum of \$500.00 is not a fair consideration for the property involved in this controversy.

That the Respondent G. Abramson, as Assignee of the claims of Meridian Furniture Co., Inc., and Style Laminates, Inc., caused a suit to be filed in the Superior Court of the State of California in and for the County of Los Angeles, being No. 665-581, against the above-named [19] bankrupt, on or about August 24th, 1956, and that subsequently, and to wit, on or about August 27th, 1956, the said G. Abramson caused the Marshal of the Municipal Court of Los Angeles to levy a Writ of Attachment upon the place of business of the above-named bankrupt, at 904 East 4th St., Los Angeles, California, and to place a keeper therein; and that subsequently, on or about September 7th, 1956, said Plaintiff obtained a judgment by default against the said bankrupt, and caused a Writ of Execution to be placed in the hands of the said Marshal of the Municipal Court, and that pursuant to said Writ

of Execution, the said Marshal caused certain work in process and supplies (being the items listed as "Supplies and Stock" in the Receiver's Inventory on file herein, and being the property in controversy herein), to be offered for sale on September 12th, 1956, and did purport to sell said items to the said Plaintiff, G. Abramson, for the crediting by her of the sum of \$500.00 upon the judgment so held by her. And the Court further finds that the said Respondent G. Abramson did subsequently attempt to sell the said property in controversy to the Respondent Howard Miller for the sum of \$500.00 cash, and executed a Bill of Sale to said Howard Miller. And that the said Respondent G. Abramson is holding the said \$500.00 to be delivered to whomsoever the Court may find is entitled to receive it.

That the lien obtained through the said attachment and the said execution, was a lien upon property of the bankrupt, obtained by legal proceedings, within four months of bankruptcy, and at a time when the bankrupt was then insolvent.

That the property in controversy was never removed from the premises of the bankrupt, and that on or about October 1st, 1956, an Involuntary Petition in Bankruptcy was filed against the bankrupt and said bankrupt was adjudicated on or about October 10th, 1956, and when the Receiver took possession of the premises of the said bankrupt, the property in controversy was still there, and the Receiver took possession thereof, and is now in possession.

That at the time the Respondent G. Abramson caused the Attachment to be levied, and at all times thereafter, the bankrupt was wholly [20] insolvent, and that the said Respondent G. Abramson not only had reasonable cause to believe, but had actual knowledge of said fact; and that the said Respondent G. Abramson knew when she attempted to purchase the said property at said execution sale by giving a credit of \$500.00 on her judgment, that she was obtaining a preference over other creditors of the same class, and knew that in the event of bankruptcy within four months of such attempted preferential purchase, she would be required to surrender the said preference; and that therefore, she was not a bona fide purchaser at said judicial sale, but was attempting to obtain a preference over other creditors of the same class.

That the purported sale by the Respondent G. Abramson to the Respondent Howard Miller, was a private sale and not a judicial sale; and that the \$500.00 paid by Respondent Howard Miller was not the fair equivalent value of said property; and that the title obtained by said Howard Miller is valid only to the extent of the \$500.00 which he paid; and that upon the return to him of said \$500.00, he has no further right, title or interest in or to any of the property in controversy.

And from the foregoing facts, the Court concludes:



## Conclusions of Law

The Court concludes that, being in possession of the property in controversy, the Court has summary jurisdiction to determine all of the questions of title to said property advanced by said Respondents and each of them.

That the Motion to Dismiss should be denied.

That when the Respondent G. Abramson attempted to purchase the property in controversy for the giving of a credit of \$500.00 upon her judgment, she was attempting to obtain a preference over other creditors of the same class, which preference this Court has the right to summarily set aside.

That so far as the transaction between Respondent G. Abramson and Respondent Howard Miller is concerned, since the \$500.00 paid by Miller was not the fair equivalent value of the said property, the purported sale only transferred to the said Howard Miller the title to the [21] property subject to the right of the Bankruptcy Court to set aside the attempted preference obtained by the said G. Abramson, and that the title of said Howard Miller is only valid to the extent of the \$500.00 which he paid, and which he is entitled to have returned to him.

The Court further concludes that the said Respondent G. Abramson should be ordered to refund the said \$500.00 which she is holding, to the said Howard Miller.

The Court further concludes that the title to the property in controversy is vested in the Trustee to be hereafter appointed in this matter, and is an asset of this bankrupt estate, free and clear of the claims of the Respondents G. Abramson and Howard Miller, or either of them, and anyone claiming by or under them or either of them.

That the prayer of the Receiver's Petition should be granted, and that the Receiver should be permitted to include the property in controversy, in the Auction Sale of the assets of this estate which sale has heretofore been authorized by this Court to save excessive rental expense.

Wherefore, It Is Ordered, That the Motion to Dismiss be, and the same is hereby denied; that the prayer of the Receiver's Petition be and the same is hereby granted, and that the property in controversy is the property of this bankrupt estate, free and clear of any claim or lien on the part of the said Respondents G. Abramson and Howard Miller, or either of them, or of anyone claiming by or under them or either of them.

It Is Further Ordered, That the \$500.00 being held by the Respondent G. Abramson, is the property of the Respondent Howard Miller, and the said Respondent G. Abramson is hereby ordered and directed to forthwith pay over said \$500.00 to the said Howard Miller.

It Is Further Ordered, That the Receiver be and he is hereby authorized and directed to include the

property in controversy, in the Auction Sale being conducted on November 7th, 1956, but is directed to keep [22] the proceeds from the sale of such items in controversy, separate from the other moneys of this estate until this Order shall become final, or until the further Order of this Court.

Dated: November 6, 1956.

/s/ HOWARD V. CALVERLEY,  
Referee in Bankruptcy.

Approved as to form.

W. J. TIERNAN and  
STANLEY J. FISHMAN,

By /s/ WILLIAM J. TIERNAN,  
Attorneys for Respondents.

[Endorsed]: Filed November 6, 1956. [23]

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[Title of District Court and Cause.]

### PETITION FOR REVIEW

The verified petition of G. Abramson and Howard Miller respectfully represents to the court:

#### I.

That on or about the 7th day of November, 1956, the Honorable Howard V. Calverley made and entered an order in these proceedings as follows:

“Wherefore, It Is Ordered, That the Motion to Dismiss be, and the same is hereby denied;



that the prayer of the Receiver's Petition be and the same is hereby granted, and that the property in controversy is the property of the bankrupt estate, free and clear of any claim or lien on the part of the said Respondents G. Abramson and Howard Miller, or either of them, or of anyone claiming by or under them, or either of them.

“It Is Further Ordered, That the \$500.00 being held by the Respondent G. Abramson, is the property of the Respondent Howard Miller, and the said Respondent G. Abramson is hereby ordered and directed [24] to forthwith pay over said \$500.00 to the said Howard Miller.

“It Is Further Ordered, That the Receiver be and he is hereby authorized and directed to include the property in controversy, in the Auction Sale being conducted on November 7th, 1956, but is directed to keep the proceeds from the sale of such items in controversy, separate from the other moneys of this estate until this Order shall become final, or until the further Order of this Court.”

## II.

That your petitioners are aggrieved by said Order and complain of certain errors in respect thereto as follows, to wit:

(1) That the motion to dismiss the petition of the Receiver for the grounds set forth in said motion should have been granted.

(2) That the Respondent Abramson is and was a bona fide purchaser of the personal property involved, having purchased the same at a judicial sale before the filing of a bankruptcy proceedings or any knowledge with respect thereto.

(3) That the Respondent Miller was and is a bona fide purchaser for value of the same personalty, who also purchased without notice or knowledge of any defect in any title from his transferor.

(4) That the entire transaction having been completed before bankruptcy, there was no lien for the bankruptcy court to set aside but only a voidable preference to recover the sum of \$500.00.

### III.

Petitioners respectfully request that the Honorable Referee forward with his certificate the following documents:

(1) The petition of the Receiver re Setting Aside Sale.

(2) The Order to Show Cause on G. Abramson and Howard Miller.

(3) The order appointing a receiver.

(4) The Notice of Motion to Dismiss the petition. [25]

(5) The affidavit of Service.

(6) A Reporter's transcript of the hearing held on October 25, 1956, at 2:00 p.m.

(7) The Findings of Fact, Conclusions of Law and Order re G. Abramson and Howard Miller.

- (8) This petition for review.
- (9) All exhibits introduced into evidence.

/s/ WILLIAM J. TIERNAN,  
Attorney for Respondents.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 15, 1956. [26]

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February 26, 1957.

Mr. Samuel A. Miller,  
Attorney at Law,  
700 Lane Mtge. Bldg.,  
Los Angeles 14, Calif.

Mr. William J. Tiernan,  
Attorney at Law,  
215 W. 7th St.—Suite 612,  
Los Angeles 14, Calif.

Gentlemen:

Re: 74412—TC Bkey., Feldman-Seljé Corp.,  
Bankrupt.

On the Court's own motion, an order has been entered this day affirming the Findings and conclusions of the Referee on the hearing heretofore heard and taken under submission.

JOHN A. CHILDRESS,  
Clerk. [28]

[Title of District Court and Cause.]

### NOTICE OF RULING

To G. Abramson and Howard Miller, and to William J. Tiernan, Their Attorney:

You and Each of You Will Please Take Notice that the Honorable Thurmond Clarke, United States District Judge, did on the 26th day of February, 1957, enter an Order affirming the Findings and Conclusions of Referee Howard V. Calverley on your Petition for Review heretofore heard and taken under submission by the Honorable Thurmond Clarke, United States District Judge, under date of February 25, 1957, and you and each of you will govern yourselves accordingly.

Dated: February 27, 1957.

/s/ SAMUEL A. MILLER,  
As Attorney for Trustee.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 28, 1957. [29]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the United States District Court,  
and to George Gardner, Trustee in Bankruptcy, and to His Attorney, Samuel A. Miller:

You and Each of You Will Please Take Notice:

That the undersigned as Counsel for the parties named herein does hereby give notice of appeal in manner following, to wit:

I.

That the parties taking this appeal are G. Abramson and Howard Miller.

II.

That the judgment, order, or rule appealed from is the judgment or ruling of the Honorable Thurmond Clarke, entered and made on the Court's own motion on or about February 26, 1957, which said order, judgment or ruling affirmed the Findings of Fact, Conclusions of Law, and Order, Judgment, or Ruling of the Honorable Howard V. Calverley made by said Referee on or about the 7th day of November, 1956. [31]

III.

That the Court to which this appeal is taken is the United States Court of Appeals for the 9th Circuit.

/s/ WILLIAM J. TIERNAN,  
Attorney for G. Abramson and Howard Miller, Appellants

[Endorsed]: Filed March 13, 1957. [32]

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[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below

constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 35, inclusive, containing the original Petition in Bankruptcy; Order of General Reference; Adjudication of Bankruptcy; Order Appointing Receiver; Petition for Order to Show Cause re Setting Aside of Sale; Order to Show Cause on G. Abramson and Howard Miller; Motion & Notice of Motion to Dismiss Petition & Points & Authorities (together with Affidavit of Service by Mail); Findings, Conclusions, and Order re Order to Show Cause against Abramson and Miller; Petition for Review; Notification of entry of affirmation of Findings & Conclusions, etc.; Notice of Ruling; Notice of Appeal; Designation of Record and Points on Appeal.

B. 1 volume of reporter's transcript of proceedings for October 25, 1956.

C. Respondent Miller's exhibit 1.

I further certify that my fee for preparing the foregoing record amounting to \$1.60, has been paid by appellant.

Witness my hand and the seal of said District Court, this 18th day of April, 1957.

[Seal]

JOHN A. CHILDRESS,  
Clerk;

/s/ CHARLES E. JONES,  
Deputy.



[Endorsed]: No. 15531. United States Court of Appeals for the Ninth Circuit. G. Abramson and Howard Miller, Appellants, vs. George Gardner, Trustee in Bankruptcy of the Estate of Feldman-Selje Corporation, Bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed April 19, 1957.

Docketed: April 26, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 15531

In the Matter of:

FELDMAN-SELJE CORP.,

Bankrupt.

DESIGNATION OF POINTS ON APPEAL

1. Were the proceedings instituted by the Trustee under Section 67 of the Bankruptcy Act proper?

2. Did the appellant, Abramson, acquire title to the personal property at the execution sale?

3. Did the appellant, Howard Miller, acquire title to the personal property from Abramson?

4. Should the proceedings have been instituted under Section 60 of the Bankruptcy Act to recover a preference rather than to invalidate a lien under Section 67?

5. Can the filing of a bankruptcy divest Abramson or Miller of title once acquired?

6. Is the appellant, Abramson, a bona fide purchaser of the property?

7. Are sales at execution excluded from the operation of Sections 60 and 67 of the Bankruptcy Act?

Dated: April 25, 1957.

/s/ WILLIAM J. TIERNAN,  
Attorney for the Appellant.

[Endorsed]: Filed April 26, 1957.